Petition

81-220

No.

Supreme Court, U.S.
FILED
JUL 31 1981
ALEXANDER L. STEVAS,
CLERK

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1981

WILLIAM E. KINGSBURY,
Petitioner,

VS.

PEOPLE OF THE TERRITORY OF GUAM
Respondent.

PETITION FOR A WRIT OF CERTICRARI
to the United States Court of Appeals
for the Ninth Circuit

HOWARD TRAPP
Post Office Box 3367
Agana, Guam 96910
Telephone: 477-9891
Attorney for Petitioner

BOWNE-PERNAU WALSH • 190 NINTH ST. • S.F., CA 94103 • (415) 864-2300

THE QUESTION

Was the juvenile court's failure to make any investigation whatever into why Billy Kingsbury killed his own father a denial of due process?

TABLE OF CONTENTS

	Page
The question	i
Opinions below	1
Jurisdiction	2
Constitutional provision and statutes involved	2
The case	3
Reason for allowing writ	16
The Ninth Circuit's decision conflicts with In re Gault, 387 U.S. 1 (1967)	16
Conclusion	18

TABLE OF AUTHORITIES CITED

Cases

Page

In Re Gault, 387 U.S. 1 (1967) 16, 17

Kent v. United States, 383 U.S. 541 (1966) 4, 5, 16, 17

Constitution

United States Constitution, Fourteenth Amendment, Section 1 2

Statutes

Guam Code of Civil Procedure:

Section 250 7

Section 251 3

Section 255 ..... 3, 4

Section 272 15

Guam Criminal & Correctional Code:

Section 7.10 3

Section 16.30(b) 3

28 U.S.C.:

Section 1254(1) 2

Section 1291 15

48 U.S.C.:

Section 1421b(u) 2, 3

Section 1424(a) 15

No.

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1981

WILLIAM E. KINGSBURY,
Petitioner,

VS.

PEOPLE OF THE TERRITORY OF GUAM
Respondent.

PETITION FOR A WRIT OF CERTIORARI
to the United States Court of Appeals for the Ninth Circuit

William E. Kingsbury respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Ninth Circuit entered in this case on June 29, 1981.

OPINIONS BELOW

Neither the opinion of the Superior Court of Guam nor that of the District Court of Guam is reported. A copy of each is appended hereto. Also appended hereto is the opinion of the Ninth Circuit which, although intended for publication, is not yet reported.

JURISDICTION

June 29, 1981, is the date of the judgment to be reviewed and the time of its entry. The statutory provision believed to confer on this Court jurisdiction to review the said judgment by writ of certiorari is 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISION AND STATUTES INVOLVED

U. S. CONST. amend. XIV, § 1:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

48 U.S.C. § 1421b(u):

> The following provisions of and amendments to the Constitution and the United States are hereby extended to Guam to the extent that they have not been previously extended to that territory and shall have the same force and effect there as in the United States or in any State of the United States: article I, section 9, clauses 2 and 3; article IV, section 1 and section 2, clause 1; the first to ninth amendments inclusive; the thirteenth amendment; the second sentence of section 1 of the Fourteenth amendment; and the fifteenth and nineteenth amendments.
>
> All laws enacted by Congress with respect to Guam and all laws enacted by the territorial legislature of Guam which are inconsistent with the provisions of

this subsection are repealed to the extent of such inconsistency.

GUAM CODE CIV. PROC. § 255:

If a child sixteen (16) years of age or older is charged with a public offense, and if the court after full investigation deems it contrary to the best interest of the child or of the public to retain jurisdiction [*sic*], the court may, in its discretion, certify such child for proper criminal procedings to any court which would have trial jurisdiction of such offense if committed by an adult, but no child under sixteen (16) years of age shall be certified, except as provided in Section 255.1 of this Code; provided, that such certifying judge shall not in turn preside over the criminal proceedings against such child.

THE CASE

Billy Kingsbury was still a child[1] when taken into custody for murdering[2] and conspiring to murder his

---

[1]Transcript at 5 (Feb. 26, 1979). "'Child' . . . means a person less than eighteen (18) years of age." GUAM CODE CIV. PRO. § 251 (c). Billy turned 18 on May 6, 1979, but this controversy has not thereby become moot, because "no person may be tried for or convicted of an offense if: (a) his age at the time of the conduct charged as an offense places him within the exclusive jurisdiction of the juvenile court; (b) he was made the subject of a petition to commence proceedings in the juvenile court because of having committed the offense and the juvenile court has not made an order that he be prosecuted under general law. . . ." GUAM CRIM. & CORRECTIONAL CODE § 7.10.

[2]"Murder is a felony of the first degree but a person convicted of murder shall be sentenced to life imprisonment notwithstanding any other provision of law; provided, however, that any person convicted of murder which is a felony of the first degree shall not be eligible for parole nor shall his sentence be suspended." GUAM CRIM. & CORRECTIONAL CODE § 16.30(b).

father.[3] The day after his arrest he was brought before the Juvenile Court of Guam.[4]

The government represented that a petition to have him certified to the Superior Court of Guam for criminal proceedings would be filed.[5] The time for hearing the petition was set for a mere three days later.[6] At the urging of Billy's lawyer, the juvenile court put the hearing over for one more day and required the petition to be filed two days prior thereto.[7]

The basic requirements of due process and fairness were never satisfied. Some care was used to establish what happened, where and when it happened, who did it, and how it was done, but just *why* Billy killed his own father was left wholly unanswered.[8] Although Guam Code of Civil Procedure § 255 requires a "full investigation" before a child may be certified for criminal proceedings,[9] the juvenile

---

[3]Transcript at 76 (March 2, 1979).

[4]Transcript at 5 (Feb. 26, 1979).

[5]*Id.* at 18.

[6]*Id.* at 19.

[7]*Ibid.*

[8]Transcript at 25-101, 104-131 (March 2, 1979); Exhibit 11.

[9]*See also Kent v. United States,* 383 U.S. 541 (1966): "We agree with the Court of Appeals that the statute contemplates that the Juvenile Court should have considerable latitude within which to determine whether it should retain jurisdiction over a child or—subject to the statutory delimitation—should waive jurisdiction. But this latitude is not complete At the outset, it assumes procedural regularity sufficient in the particular circumstances to satisfy the basic requirements of due process and fairness, as well as compliance with the statutory requirement of a 'full investigation.'" 383 U.S. at 552-53 (footnote omitted). "'What is required before a waiver is, as we have said, "full investigation." . . . It prevents the

court made no investigation whatever into that most important question. Billy was certified to the superior court to be tried for murder and conspiracy to murder, but the juvenile court's decision did not even touch upon why Billy killed his own father. In fact, the points to which the juvenile court directed its attention were little

---

waiver of jurisdiction as a matter of routine for the purpose of easing the docket. It prevents routine waiver in certain classes of alleged crimes. It requires a judgment in each case based on "an inquiry not only into the facts of the alleged offense but also into the question whether the *parens patriae* plan of procedure is desirable and proper in the particular case." . . .'" 383 U.S. at 553, n. 15. "The Court of Appeals in this case relied upon *Wilhite v. United States*, 108 U.S. App. D.C. 279, 281 F.2d 642 (1960). In that case, the Court of Appeals held, for purposes of a determination as to waiver of jurisdiction, . . . that the 'full investigation' required of the Juvenile Court need only be such 'as is needed to satisfy *that* court . . . on the question of waiver.' (Emphasis supplied.) The authority of *Wilhite*, however, is substantially undermined by other, more recent, decisions of the Court of Appeals. . . . In *Watkins v. United States*, 119 U.S. App. D.C. 409, 343 F.2d 278 (1964), decided in November 1964, the Juvenile Court had waived jurisdiction of appellant who was charged with housebreaking and larceny. . . . The court observed that '[a]ll of the social records concerning the child are usually relevant to waiver since the Juvenile Court must be deemed to consider the entire history of the child in determining waiver. . . .'" 383 U.S. at 557-59 (footnote omitted). "Meaningful review requires that the reviewing court should review. It should not be remitted to assumptions. It must have before it a statement of the reasons motivating the waiver including, of course, a statement of the relevant facts. It may not 'assume' that there was adequate reasons, nor may it merely assume that 'full investigation' has been made. Accordingly, we hold that it is incumbent upon the Juvenile Court to accompany its waiver order with a statement of the reasons or considerations therefor. We do not read the statute as requiring that this statement must be formal or that it should necessarily include conventional findings of fact. But the statement should be sufficient to demonstrate that the statutory requirement of 'full investigation' has been met." 383 U.S. at 561.

different from those involved in determining any charge of violation of a penal statute:

After a full hearing on the matter, this Court finds:

That the minor is presently charged with the Murder and Conspiracy to Commit the Murder of his father, Milton Kingsbury.

That there is sufficient evidence upon which a Grand Jury could return an indictment.

That the commission of the alleged crimes exhibit a substantial degree of criminal sophistication. Evidence was introduced that the minor attempted to procure the services of another individual to kill his father for the sum of $10,000.00. There was also evidence that the minor arranged for the purchase of the alleged murder weapon shortly before the homicide.

That the alleged offense was committed in a premeditated and wilful Manner. Evidence was introduced that the minor had been planning the crime for a number of weeks. On the day of the crime, the minor allegedly went to the scene at 1:30 A.M. to gain entry and returned several hours later to await his father's arrival.

That the minor is not amenable to treatment under the Juvenile Code. The minor was born on May 6, 1961 and will reach the age of majority approximately two months from the date of the hearing. Testimony was received from John Balajadia, supervisor of Juvenile Hall and a juvenile probation officer. The testimony leads the Court to the determination that the minor's proximity to the age of majority and the gravity of the crimes render doubtful the minor's

prospects for rehabilitation by use of facilities and programs available to the Juvenile Court.

In view of the foregoing, the Court hereby ORDERS transfer of jurisdiction to the Superior Court of Guam and further ORDERS the Attorney General's Office to file a complaint or refer to the Grand Jury for possible indictment within ten (10) days of the date hereof. The minor is hereby ORDERED to be placed in the custody of the Department of Public Safety and bail is set at $125,000.00.

SO ORDERED.[10]

It was left to the superior court, of which the juvenile court is no more than a division,[11] to order the investigation which finally supplied the answer. How ill-timed! The superior court ordered its own psychiatric expert, Frances Reid, M.D., to perform an evaluation of Billy.[12] If only the juvenile court had appointed the same expert and awaited evaluation before ruling on the petition for certification! For it is in Dr. Reid's evaluation that the answer to why Billy killed his own father is at last revealed:

---

[10]Appendix.

[11]"There is hereby created for the Territory of Guam a new division of the Superior Court which shall be called the Juvenile Court." GUAM CODE CIV. PRO. § 250.

[12]Order for Examination Regarding Mental Condition, Clerk's Record (March 23, 1979).

GUAM COMMUNITY MENTAL HEALTH CENTER
P.O. Box AX
Agana, Guam 96910

May 16, 1979

PSYCHIATRIC EVALUATION

"Re: Criminal Case No. 38F-79

KINGSBURY, William Eugene
DOB: 5-6-61 Age: 18

Mrs. Nobuko Kingsbury furnished the following information about Bill, and when the statements were after the time that his sister, Barbara, or Bill could remember, they would corroborate the statements given.

Bill was born of a barmaid in Okinawa at the Koza Hospital. The birth was attended by a mid-wife. Therefore, Mrs. Kingsbury can give no details of Bill's conception and pre-natal life nor even his birth. He weighed 5 pounds more or less (5 pounds or less is classed as pre-mature, regardless of gestation period). A pre-mature baby is regarded a disadvantaged both with regard to health and emotional stability. At the time Mrs. Kingsbury took him, right after his birth because his mother did not want him, she claims he had a high fever, which can cause brain damage. However, he was not kept at the hospital. She also states that he ran a low grade fever, almost daily, for several years. The most common cause of this is T.B. She had him checked for T.B., and he was negative. Mrs. Kingsbury told that for the first three years of his life he lived constantly on her shoulder. Due to his being premature, this may be the answer to why he survived. She did not have trouble finding proper food for him.

According to all three (Barbara, Bill, and Mrs. Kingsbury), Bill has had no serious illness, and the only childhood disease he had was chicken pox; he was vaccinated for other childhood diseases, for which vaccination was available at that time.

None of his accidents were momentous. His left forearm was broken at one time, and it healed without problems. When he was playing football in high school. he hurt his left leg. In 1976 he was "knocked out" while playing football and was unconscious for three to four minutes. He was cared for at the Kadena Dispensary and was told that he had a slight concussion. On April 21, 1977, he fell, mostly slid, down the cliff in back of old G.M.H. He only received cuts and bruises.

From the above it does not seem worthwhile to hold up this report while seeking medical background. As for schooling Mrs. Kingsbury told that prior to Bill's coming to Guam, he did very well in school, no trouble at all and nothing below B. Bill told of losing interest in school: he believes due to his suspicions about his father, which started shortly after his arrival, January 1977.

Bill worked the summers of 1977 and 1978 for his father at Getz Bros. He did packing and had no problems with his work. His father also gave jobs to Mrs. Kiyoko Clark's (his father's girlfriend) four sons, ranging from 12 to 18. The three oldest worked all summer, and the 12-year-old worked only weekends. This was hard for Bill to take because he knew what his father was doing. Bill says the Clark boys were shown all kinds of favoritism especially Tom, the oldest. One of them used the company car, and they took off whenever they wished, and no questions were asked. This made Bill feel particularly bad because

they "had normal father-son relationship in Okinawa until I was 15."

Bill worked as a busboy at the Halekai Restaurant from August 1978 until September when he changed to playing the piano until January 1979, when he went to Hawaii for two weeks. He moved out of the family home on September 1, 1978, and "I came back because of mother's divorce."

Bill feels that he did not go to school the 1978-1979 school year to strike back at his father. He dropped out of school around the first of March of 1978—"uninterested .... Friends at school would tease me about my father fooling around . . . Many times I would try to talk with my father about it, and he would tell me, 'Shut up.' " His father came to Guam in December of 1976, and the family came in January of 1977. Soon thereafter he began having suspicions about his father because he would see him with Mrs. Clark. Bill's girlfriend, Pamela, lived in Tumon Village, where Mrs. Clark lived, and he would see his father there. Mr. Kingsbury painted Mrs. Clark's car for her. One time Bill took Pamela to Chuck's Steak House, and he saw his father sitting in the corner with Mrs. Clark. Mr. Kingsbury's back was turned to him, and so he left with Pamela and went to the Hilton. Shortly thereafter his father followed him to the Hilton and yelled at Bill before everyone and took his car and left Bill afoot. Bill claimed his father beat up on him. My question was exactly what did he mean by "beat up," and Bill replied "bloody my lips or bloody my nose." (Q) You mean he used his fists to punish you? (A) "Yes."

Mrs. Kingsbury started going to the Mormon Church. That's where Mrs. Clark and her sons went.

When Bill went with his mother to church, Arthur (one of Mrs. Clark's sons) said, "We don't want you to come to our Church. You are shaming us."

His father paid $1,200 for a Datsun B210, and he would let the Clark boys use it. "He pressured me a lot when mother was in the Hospital (I believe this was in November of 1978) to have my mother committed to a mental institution." Mrs. Kingsbury was brought to the Inpatient Ward due to a suicide attempt when she found out about her husband's affair. Mrs. Kingsbury was extremely depressed and cried all the time for quite a while. At first when the writer talked with Mr. Kingsbury, he could see no reason why he should not have his girlfriend and his family too. When asked if it would be all right for Mrs. Kingsbury to have an affair and still live in his home and their marriage go on as usual, he decided that he did not believe he would like that. While his wife was still very depressed, he told her in front of the writer that she did not have any home to go to when she left the hospital, that he was moving her things out. The last thing Mr. Kingsbury said to the writer the day Mrs. Kingsbury was discharged was, "I'm tired of taking other people into consideration. From now on I'm going to live for myself."

Mrs. Kingsbury went to Japan in December. She moved into the Mendiola Apartments. She finally accepted the situation and decided to sue Mr. Kingsbury for divorce rather than let him get it, and she retained Attorney Nagatomo Yamaoka, who is with Trapp and Gayle. One time Bill and his mother went to their home to do their washing, and Mr. Kingsbury came while they were there. Mrs. Clark called on the phone, and Mr. Kingsbury said, "No, you can't come now. The

bitch is here." Mrs. Kingsbury went to Okinawa on February 7 for nine days. "Mother had given me her bank book before she left for Okinawa." It seems that she had saved $10,000 for each of the children for their higher education. When Barbara left for the States, Mrs. Kingsbury gave her the $10,000. Mr. Kingsbury had been making Barbara sleep in the garage before she left.

This brought up the subject of the $10,000. Bill told that his mother brought back his from Okinawa, and "I stole it from her." On the evening of February 22 Mr. Kingsbury called Bill and told him that he wanted to talk to him in his apartment. Mr. Kingsbury had also taken an apartment in the Mendiola Apartments. When Bill arrived, he saw Mrs. Clark, and she started to explain why she was there. Bill told her that he wasn't interested and didn't want to talk to her. Mr. Kingsbury said, "Bill, do you know that you are not my son?" Bill, "I did not want him to know that I was surprised, and so I pretended that I already knew."

(Mr. Kingsbury) "So your mother told you."

(Bill) "Well I have a birth certificate with your name on it."

(Mr. Kingsbury) "Oh, we arranged that in Okinawa."

"Then I left," Bill told the writer. He then went with his friend, and "I had six or seven drinks in three hours. The last was at 1:00 AM."

(Dr.) Then you were drunk at the time of the incident?

(Bill) "No. I had plenty of time to sober up before 6 o'clock" on the morning of February 23, when the shooting took place.

(Dr.) Did you have any drugs, or were you using any drugs?

(Bill) No.

Then the writer proceeded with a more formal mental status examination. Bill arrived with his mother and sister, nicely dressed. The mother and sister only stayed for a short time to give background information. Bill's facies showed no hostility, and he has no problem with speech. He related well with the examiner: "Mr. Trapp thinks I should be very careful of you, but I don't feel that way."

(Dr.) You have no reason to. I tried to make Mr. Trapp know that the more information I have about you, the better it is for you.

Bill's mood appeared relaxed, and his moods and and does not go off on tangents. Asked what is his nor any trouble with fellow workers, not even the Clark boys.

Bill's thought processes are rational and coherent, and he does not go off on tangents. Asked what is his main concern now: "Whether all of this will turn out hopefully good—or bad." He has never had feelings of persecution or that people were against him. The nearest he could come up with anything resembling hallucinations were: that he heard his "Mother calling me when I was asleep . . . This was in 1975 . . . . When I was in Hawaii in February. I dreamed my father had killed my mother." Bill has smoked marijuana, "but not for a long time," and no other drugs. He did drink alcohol occasionally. He doesn't have any

phobias and has never had feelings of depersonalization. Of all the psychological defenses (denial, rationalization, projection, repression, regression, escape, etc.) he believes he uses suppression almost exclusively. This is bad, for things build up in him.

Bill is oriented in the three spheres, and his memory is good, as well as his ability to concentrate. He did the 7's rapidly with only one error. His associations, both opposites and similarities, were exceptionally good. He only displayed a faint ability to do abstract thinking. His practical judgment is fairly good. The only insight he indicated was his awareness of suppressing unpleasant things. His estimated functioning I.Q. is at least on the high side of average.

Diagnoses:

No Mental Disorder
Competent to Stand Trial
(requested by A.G.'s Office)

Comments: The psychological stressors under which Bill had been trying to function: "Overtly hostile relationship between parents, overtly hostile parental behavior toward child, and pending divorce of parents" were sufficient to cloud the already mixed-up thinking of the average adolescent. Add to this the loss of his good relationship with his father and the strain of having his classmates taunt him about his father's behavior. This had been going on since the family arrived on Guam in January of 1977. Then since last November his mother's attempt at suicide, her constant crying and unremitting depression and telling him of her desire to die and no reason to live; in the writer's opinion, his capacity to determine what was right and what was wrong had to be diminished. Then the proverbial "straw that broke the camel's

> back" was when his father told Bill that he was not his son. "Extenuating circumstances" seems the understatement of the year.
>
> /s/ Frances Reid, M.D.
> FRANCES REID, M.D.
> Psychiatrist"[13]

Billy appealed to the District Court of Guam.[14] (The jurisdiction of the district court was invoked under Guam Code of Civil Procedure § 272 and 48 U.S.C. § 1424(a).) The district court affirmed, but not without appearing to acknowledge that the juvenile court's failure to investigate why Billy killed his own father was a denial of due process:

> [I]t is strongly suggested that the method used could be vastly improved. Certainly, the minor's background is an important consideration and it is only the grievousness of the crime charged, the small amount of time to be afforded for rehabilitation, and certain facts in signed statements tending to prove that the Petitioner should be tried as an adult which keep us from reversing the Juvenile Court's determination. The government must be placed on notice that the Guam Juvenile Court should adhere to the due process requirements outlined in *Kent v. U.S.*, [383 U.S. 541 (1966)], and that while certification is discretionary, such proceedings are not to be conducted arbitrarily in a rubber stamp fashion.[15]

Billy appealed next to the Ninth Circuit.[16] (The basis for the Ninth Circuit's jurisdiction is 28 U.S.C. § 1291.) The

---

[13]Psychiatric Evaluation, Clerk's Record (May 16, 1979).

[14]Notice of Appeal, Excerpts of Record at 6.

[15]Appendix.

[16]Amended Notice of Appeal, Excerpts of Record at 18.

question presented for review was identical to that herein, "Was the juvenile court's failure to make any investigation whatever into why Billy Kingsbury killed his own father a denial of due process?"[17] The Ninth Circuit, however, restated the issue with considerable finesse: "On the merits, the appellant's principal claim is that the failure of the juvenile court to make an investigation into *motive* was a denial of due process."[18] And the district court's judgment was affirmed.[19]

REASON FOR ALLOWING WRIT

THE NINTH CIRCUIT'S DECISION CONFLICTS WITH IN RE GAULT, 387 U.S. 1 (1967)

The foregoing statement of the case shows that in the juvenile court proceeding, the basic requirements of due process and fairness were not satisfied; that the juvenile court never attempted to establish why Billy killed his own father; that the points to which the juvenile court directed its attention were little different from those involved in determining any charge of violation of a penal statute; and that the decision of the district court affirming the juvenile court decision certifying Billy to stand trial as an adult was, by the Ninth Circuit, affirmed.[20]

---

[17]Defendant-Appellant's Brief at 1 (dated Aug. 16, 1979).

[18]Appendix (emphasis added).

[19]*Ibid.*

[20]A list of factors is contained in a policy memorandum appended to *Kent* v. *U.S.*, *supra*, 383 U.S. at 565, 86 S.Ct. at 1059, and quoted by the district court in this case. . . . It is clear that the juvenile court took these considerations into account." Appendix. Wrong! It simply could not be clearer that the juvenile court did *not* take those factors into account. For example, among those fac-

In Re Gault, 387 U.S. 1 (1967), reiterated the necessity of observing the basic requirements of due process and fairness, and in that connection this Court said,

> In *Kent v. United States*, 383 U.S. 541 (1966), we considered the requirements for a valid waiver of the "exclusive" jurisdiction of the Juvenile Court of the District of Columbia so that a juvenile could be tried in the adult criminal court of the District. Although our decision turned upon the language of the statute, we emphasized *the necessity that "the basic requirements of due process and fairness" be satisfied in such proceedings.*
>
> . . . .
>
> [I]t would be extraordinary if our Constitution did not require the procedural regularity and the exercise of care implied in the phrase "due process." Under our Constitution, the condition of being a boy does not justify a kangaroo court. The traditional ideas of Juvenile Court procedure, indeed, contemplated that time would be available and care would be used *to establish precisely* what the juvenile did and *why he did it* . . . . [S]o far as appears in the record before us . . . , *the points to which the judge directed his attention were little different from those that would be involved in determining any charge of violation of a penal statute.*[21]

It necessarily follows that the Ninth Circuit's decision and Gault are in irreconcilable conflict.

---

tors are "[t]he sophistication and maturity of the juvenile *as determined by consideration of his home, environmental situation, emotional attitude and pattern of living.*" *Kent v. United States*, 383 U.S. 541, 567 (1966) (emphasis added). *These were never given any consideration whatever.*

[21]387 U.S. at 12, 27-28 (footnotes omitted) (emphasis added).

CONCLUSION

A writ of certiorari should issue to review the judgment and opinion of the Ninth Circuit.

Dated, Agana, Guam,
July 23, 1981.

Respectfully submitted,

HOWARD TRAPP
Attorney for Petitioner

. . . .

(Appendix follows)

Appendix

People of the Territory of Guam,
Plaintiff-Appellee,

v.

William E. Kingsbury,
Defendant-Appellant.

No. 79-1585.

United States Court of Appeals,
Ninth Circuit.

Argued and Submitted Jan. 17, 1980.

Decided June 29, 1981.

Before TANG, SCHROEDER and POOLE,
Circuit Judges.

SCHROEDER, Circuit Judge:

This is an appeal from a decision of the District Court of Guam, Appellate Division, affirming a Guam juvenile court decision certifying the appellant, William Kingsbury, to stand trial as an adult. Because Kingsbury was seventeen years old at the time of the alleged crime, he was originally brought before the juvenile court in Guam. Guam Code Civ. Proc. §§ 251, 252. The juvenile court, after a hearing on Kingsbury's amenability to treatment as a juvenile ruled, pursuant to Guam Code Civ. Proc. § 255, that the appellant should stand trial as an adult. Appellant challenges that determination on the ground

that the juvenile court's failure to conduct a full investigation into his motive constituted a denial of due process.

The appellee asserts, first, that this Court lacks jurisdiction of the appeal because it is an interlocutory decision of the District Court of Guam, and, second, that the juvenile court was correct on the merits. We hold that we have jurisdiction on the appeal from the district court's decision, and we affirm its holding that the appellant should stand trial as an adult.

The threshold question is one of jurisdiction. While we conclude that some review by the district court at this stage was clearly authorized, the question of this Court's jurisdiction to review the district court under 28 U.S.C. § 1291 is more complex.

The matter was originally brought to the district court by the appellant on March 6, 1979, as an appeal from the certification order of the juvenile court. The jurisdictional basis for that appeal lies in Guam Code Civ.Proc. § 272 which provides that a party aggrieved by an order of the juvenile court may file a notice of appeal with the district court.[1]

On March 15, 1979, appellant was indicted in the superior court of Guam. Appellant sought review of the denial of his motion to dismiss the indictment. He petitioned the

---

[1]Guam Code Civ. Proc., Title V, Juvenile Court, Chapter I, General Provisions, Section 272 provides in part:

> An interested party aggrieved by order or decree of the court may apply to the District Court of Guam for the allowance of an appeal, and the said court may allow such appeal whenever in the opinion of said court the order or decree ought to be reviewed.

district court for a writ of mandate under Guam Crim. Proc. Code § 65.17.[2] The district court reviewed the juvenile court proceedings and decided there had been no error.

Pursuant to 28 U.S.C. § 1291, this Court has jurisdiction over appeals from final orders of the District Court of Guam. In *Corn v. Guam Coral Co.*, 318 F.2d 622 (9th Cir. 1963), we held that appellate jurisdiction extends to orders

---

[2]The petition for writ was consolidated with the section 272 appeal. Guam Crim.Proc. Code, Chapter 65, Pleading and Motions, Section 65.15 provided in part:

> Any defense, objection or request which is capable of determination without the trial of the general issue may be raised before trial by motion. Motions may be written or oral at the discretion of the Judge. The following shall be raised prior to trial: (a) Defenses and objections based on defects in the institution of the prosecution;

Section 65.17 provided:

> (a) Prior to trial, a party may apply for review of an adverse ruling made pursuant to subsections (a) through (c) of Section 65.15 by means of a petition for writ of mandate or prohibition unless the court, prior to the time review is sought, has dismissed the criminal action. (b) A defendant may seek review of any ruling by the trial court pursuant to subsection (c) of Section 65.15 on appeal from conviction whether or not he has previously sought or obtained review of such ruling and notwithstanding the fact that the judgment of conviction is based upon a plea of guilty or nolo contendere.

Although the district court's opinion stated that it was treating the matter as an "interlocutory appeal pursuant to § 65.17 of the Guam Criminal Procedure Code", that section provided only for review by means of a writ. *See People of Territory of Guam v. District Court of Guam*, 641 F.2d 816 (9th Cir. 1981). The section was repealed in December of 1980. Our holding today is that the district court's appellate jurisdiction was based upon Guam Code Civ.Proc. § 272, rather than Guam Code Crim.Proc. § 65.17.

of the district court sitting in both its capacity as a federal court and in its capacity as an appellate court for the Guam territorial courts. Because our jurisidiction is limited to final orders we must consider whether the decision of the district court in this case is a final decision as to the propriety of the appellant's trial as an adult.

We view the finality standard to be applied as analogous to the standard applied by the United States Supreme Court to test the finality of state court judgments pursuant to 28 U.S.C. § 1257. Under the standards traditionally applied to section 1257, the fact that a decision is a final decision of the highest state court does not necessarily mean that the decision is final for section 1257 purposes. Thus, the Supreme Court has generally refused to review a state appellate decision where further state court proceedings are pending. *See, e.g., California Nat'l. Bank v. Stateler,* 171 U.S. 447, 449, 19 S.Ct. 6, 7, 43 L.Ed. 233 (1898).

The Supreme Court has also held, however, that such decisions are final for section 1257 purposes where the claim on appeal has been finally litigated in a state appellate court and may not be raised on appeal again after the end of subsequent state proceedings. *Cox Broadcasting Corp. v. Cohn,* 420 U.S. 469, 482, 95 S.Ct. 1029, 1039, 43 L.Ed.2d 328 (1975). Appealability here therefore turns on whether Guam law requires a juvenile to question the propriety of standing trial as an adult before the trial takes place and precludes him from raising the issue on post-conviction appeal. The relevant Guam statutes and precedent do not provide a clear answer to this question.

Guidance can be found, however, by examining judicial interpretation of similar statutes in other jurisdictions.

There is no unanimity among state courts as to the propriety of pretrial review when a juvenile is ordered to be tried as an adult. The IJA-ABA Juvenile Justice Standards Project advocates pretrial review. *See* Institute of Judicial Administration and American Bar Association Joint Commission on Juvenile Justice Standards, Standards Relating to Transfer Between Courts § 2.4 (Tent. Draft 1977). Such review is permitted in at least fourteen jurisdictions.[3]

---

[3]*See State v. Trail*, 255 S.E.2d 900, 902 (W.Va. 1979); *State, In Interest of Atcheson*, 575 P.2d 181, 183 (Utah 1978); *Boyd v. State*, 341 So.2d 680, 683 (Ala. 1976); *Interest of Doe*, 98 Idaho 40, 557 P.2d 634, 636 (1976); *In re Welfare of I.Q.S.*, 309 Minn. 78, 244 N.W.2d 30, 35 (1976); *State v. Evangelista*, 134 N.J.Super. 64, 338 A.2d 224, 227 (1975); *In re Doe*, 86 N.M. 37, 519 P.2d 133, 134 (1974); *Aye v. State*, 17 Md.App. 32, 299 A.2d 513, 517 (1973); *P.H. v. State*, 504 P.2d 837, 839 n. 1 (Alaska 1972); *Graham v. Ridge*, 107 Ariz. 387, 489 P.2d 24, 25 (1971); *Templeton v. State*, 202 Kansas 89, 447 P.2d 158, 161 (1968); *In re Doe I*, 50 Haw. 537, 444 P.2d 459 (1968); *In re Houston*, 221 Tenn. 528, 428 S.W.2d 303 (1968); *State v. Little*, 241 Or. 557, 407 P.2d 627, 628 (1965), *cert. denied*, 385 U.S. 902, 87 S.Ct. 208, 17 L.Ed.2d 133 (1966). In a number of states which do not allow pretrial appeal, the statutory appeal provisions differ from those in Guam. *See D. H. v. People*, 192 Colo. 542, 561 P.2d 5, 6 (1977) (transfer order not appealable because does not meet Colorado definition of finality); *In re Becker*, 39 Ohio St.2d 84, 314 N.E.2d 158, 159-60 (1974) (juvenile appeal statute permits appeal only of delinquency finding); *Commonwealth v. Croft*, 445 Pa. 579, 285 A.2d 118 (Pa. 1971) (certification order not appealable under statute which permits rehearing after order "committing" or "placing" child); *People v. Jiles*, 43 Ill.2d 145, 251 N.E.2d 529, 530 (1969) (court refused to exercise rule-making power to permit review of transfer order). *But see In re T. J. H.*, 479 S.W.2d 433, 434 (Mo. 1972); *Kent v. Reid*, 316 F.2d 331, 334

When we examine the decisions in other jurisdictions, we find that those having broad statutory language similar to Guam Code Civ. Proc. § 272 have been interpreted as permitting a juvenile to appeal a certification order immediately after the order's entry.[4] Further, in the jurisdictions allowing pretrial review, the statutes, like that of Guam, require review, not of the adult court indictment but of the juvenile court certification order.[5] It is overwhelmingly held by courts addressing the question, that such review is the only, and hence the final review available.[6] We therefore hold that the district court properly

---

(D.C. Cir. 1963). The Hawaii Supreme Court in *In re Doe*, 50 Haw. 537, 444 P.2d 459, 460 (1968) argues persuasively that the *Kent* decision should be limited to its facts. Moreover, since the *Kent* decision, the District of Columbia has changed its juvenile statute to allow immediate appeal. *See Choco v. United States*, 383 A.2d 333 (D.C. App. 1978).

[4]*Boyd v. State*, 341 So.2d 680, 683 (Ala. 1976); *In re Doe*, 86 N.M. 37, 519 P.2d 133, 134 (1974); *In re Houston*, 221 Tenn. 528, 428 S.W.2d 303 (1968). *See Interest of Doe*, 98 Idaho 40, 557 P.2d 634, 636 (1976). *But see Interest of Clay*, 246 N.W.2d 263, 265 (Iowa 1976).

[5]See cases cited in first sentence of footnote 3 *supra*.

[6]*See State v. Stanley*, 60 Haw. 527, 592 P.2d 422, 425-26 (1979), *cert. denied*, 444 U.S. 871, 100 S.Ct. 149, 62 L.Ed.2d 97 (1979); *State v. Harwood*, 98 Idaho 793, 572 P.2d 1228, 1230 (1977); *People v. Chi Ko Wong*, 18 Cal.3d 698, 135 Cal.Rptr. 392, 557 P.2d 976, 983-85 (1976), *overruled on another ground sub nom. People v. Green*, 27 Cal.3d 1, 164 Cal.Rptr. 1, 609 P.2d 468 (Sup. Ct. 1980) (en banc); *Aye v. State*, 17 Md.App. 32, 299 A.2d 513 (1973); *State v. Briggs*, 245 Or. 503, 420 P.2d 71, 73 (1966); *State v. Loray*, 46 N.J. 179, 190, 215 A.2d 539, 545 (1965).

had jurisdiction under section 272 to review the certification decision.[7] Under the standard suggested by *Cox Broadcasting*, we have jurisdiction over this appeal from the District Court of Guam.[8]

On the merits, the appellant's principal claim is that the failure of the juvenile court to make an investigation into motive was a denial of due process. In the context of juvenile certification procedures, due process requires the rights to counsel, to adequate notice and to a statement of reasons at a hearing to determine whether a juvenile is to be tried as an adult. *Kent v. United States*, 383 U.S. 541, 86 S.Ct. 1045, 16 L.Ed.2d 84 (1966); *In re Gault*, 387 U.S.

---

[7]We do not agree with the Territory of Guam's argument that section 272 does not permit appeals from certification orders. The Territory relies on the fact that the section provides that if the order appealed from is affirmed, the district court should remand to the jurisdiction of the juvenile court. The Territory argues that if the legislature contemplated appeals from certification orders, the remand on affirmance would be to the Guam superior court rather than to the juvenile court.

The certification order, however, is an action of the juvenile court. It is therefore appropriate to remand the action to the juvenile court. Where a certification order has been affirmed, section 272 requires the juvenile court to reassume "jurisdiction . . . in the same manner as if no appeal had been taken." The jurisdiction over the juvenile is immediately transferred upon remand from the juvenile court to the Guam superior court.

[8]We do not reach the question whether a juvenile may attack a certification order on post-conviction appeal if he fails to seek appellate review of the certification order prior to trial as an adult. We also do not decide whether a juvenile may challenge a certification order on post-conviction appeal if the District Court of Guam refuses to exercise its discretionary appellate authority under section 272. Appeal to this Court from the denial of a motion to dismiss the criminal indictment is not proper. *Guam v. Lefever*, 454 F.2d 270 (9th Cir. 1972).

1, 87 S.Ct. 1428, 18 L.Ed.2d 527 (1967); *Harris v. Procunier*, 498 F.2d 576 (9th Cir.) (en banc), *cert. denied*, 419 U.S. 970, 95 S.Ct. 235, 42 L.Ed.2d 186 (1974). Those requirements were met in this case. A day-long hearing was held, attended by appellant, his mother and his counsel. A written decision was rendered and there is no claim of denial of access to records.

Appellant challenges only the failure to investigate into the reason behind the murder. The specific factors to be considered and the weight to be given to each, however, are discretionary. A list of factors is contained in a policy memorandum appended to *Kent v. U.S., supra*, 383 U.S. at 565, 86 S.Ct. at 1059, and quoted by the district court in this case. These factors include: the seriousness of the crime; whether it was violent or premeditated; whether the crime resulted in personal injury; the prosecutive merit of the complaint; the sophistication of the juvenile; prior record and contacts with the youth authority; and the prospects for rehabilitation. It is clear that the juvenile court took these considerations into account. While investigation into motive may be advisable in some cases, the serious nature of the crime, the premeditation and sophistication involved in this murder, and the fact that appellant would be subject to juvenile jurisdiction for only two months justified certification in this case.

Affirmed.

POOLE, Circuit Judge, dissenting:

I respectfully dissent.

The panel is agreed that the jurisdiction of this court to review the decision of the United States District Court for the District of Guam, Appellate Division, which affirmed the order certifying Kingsbury for trial as an adult, exists if at all by virtue of 28 U.S.C. § 1291. Maj.Op., Slip op. at 3202, at—— ——; *See Corn v. Guam Coral Co.*, 318 F.2d 622, 624 (9th Cir. 1963); *accord, Agana Bay Development Co. v. Supreme Court of Guam*, 529 F.2d 952, 960 n.1 (9th Cir. 1976) (Kennedy, J., dissenting). Section 1291 permits appeals only from "final orders" and this circuit has held that the finality determination is a function of federal law. *See Corn v. Guam Coral Co., supra*, 318 F.2d at 624.

At least since *Cobbledick v. United States*, 309 U.S. 323, 60 S.Ct. 540, 84 L.Ed. 783 (1940), and as recently as *Firestone Tire & Rubber Co. v. Risjord*, 449 U.S. ——, 101 S.Ct. 669, 66 L.Ed.2d 571 (1981), the Supreme Court has carefully described the considerations relevant to determining whether a district court's order is final and reviewable under § 1291. It therefore comes as some surprise that in analyzing appellate jurisdiction in this case, the majority ignores § 1291 and the formidable host of authorities analyzing it and draws instead an analogy to 28 U.S.C. § 1257 —a statute which has nothing to do with the jurisdiction of any circuit court of appeals.[1] As I find this analogy

[1]There may be cases in which an analogy to § 1257 would be useful in determining whether a final order exists under § 1291. *See* C. Wright, *Law of Federal Courts*, § 101, p. 510 (3d ed. 1976). The analogy is unnecessary in this case, however, where the law of § 1291 may be applied so readily.

puzzling, unnecessary and irrelevant, and as application of the finality principles of § 1291, and the current law of this circuit, compel the conclusion that an order of the Guam courts certifying a juvenile for trial as an adult simply is not final and therefore not appealable to this court before trial, I respectfully dissent.

A

A final order of a district court for purposes of § 1291 is one that "ends the litigation on the merits and leaves nothing for the court to do but execute the judgment." *Coopers & Lybrand v. Livesay*, 437 U.S. 463, 467, 98 S.Ct. 2454, 2457, 57 L.Ed.2d 351 (1978), *quoting, Catlin v. United States*, 324 U.S. 229, 233, 65 S.Ct. 631, 633, 89 L.Ed. 911 (1945). It is final "in the sense of terminating the criminal proceedings in the trial court." *United States v. MacDonald*, 435 U.S. 850, 857, 98 S.Ct. 1547, 1551, 56 L.Ed.2d 18 (1978).

There is absolutely no doubt that the order committing Kingsbury for trial in the superior court is not final in this sense. Kingsbury remains to be tried and criminal proceedings remain to be conducted. On its face, this order is no different from the panoply of pretrial determinations made before trial from which no interlocutory appeal is permitted.

Where, as here, criminal proceedings against appellant have not terminated, the Supreme Court has said that appellate jurisdiction to review pretrial rulings, such as the certification order before us, exists only if the order falls within the "narrow class" of collateral final orders de-

scribed in *Cohen v. Beneficial Industrial Loan Corp.*, 337 U.S. 541, 546, 69 S.Ct. 1221, 1225, 93 L.Ed. 1528 (1949). *See Firestone Tire & Rubber Co. v. Risjord, supra,* 101 S.Ct. at 674 (if the litigation from which a challenged order arises has not terminated, review is possible under § 1291 only under the *Cohen* collateral order exception). The majority errs in its failure to apply the principles of *Cohen.*

B

To qualify as a collateral order, reviewable before proceedings in the trial court have terminated,

> [t]he order must conclusively determine the disputed question, resolve an important issue completely separate from the merits of the action, and be effectively unreviewable on appeal from a final judgment.

Coopers & Lybrand v. Livesay, supra, 437 U.S. at 468, 98 S.Ct. at 2458 (stating the *Cohen* test); *see also Abney v. United States,* 431 U.S. 651, 658, 97 S.Ct. 2034, 2039, 52 L.Ed.2d 651 (1977). Assuming, solely for the purposes of this analysis, that the certification order possesses the first two characteristics of a collateral final order in the sense that Kingsbury's certification for trial as an adult has been conclusively determined by the Guam courts and that certification is a separate determination from the merits of the criminal trial yet to occur, the order still is not subject to interlocutory review by this court because denial of review now will not prevent consideration of the certification order upon appeal to us from final judgment.

C

The third requirement of *Cohen* is interpreted practically. Even if review of a claim might be possible after a final judgment, it may qualify as a collateral final order if the right asserted in the interlocutory appeal amounts to a right not to have the trial continue. *See Abney v. United States, supra,* 431 U.S. at 660, 97 S.Ct. at 2040. There is no suggestion in this case that if the certification was in error Guam may not prosecute Kingsbury. The certification determines the forum in which criminal proceedings will take place, not whether such proceedings will take place at all. Hence, this is not one of those extraordinary rights which must be vindicated now if it is to be vindicated at all. *See also United States v. Layton,* 645 F.2d 681 (9th Cir. 1981) (claim of lack of subject matter jurisdiction not appealable as collateral order); *United States v. Wilson,* 639 F.2d 500, 502 (9th Cir. 1981) (claim of selective prosecution); *United States v. Griffin,* 617 F.2d 1342, 1344 (9th Cir. 1980) (claim of vindictive prosecution).

An interlocutory appeal will be permitted under § 1291 when denial of such an appeal would render any appellate review of the claim impossible as where review after final judgment is not permitted. *See e. g., United States v. Ryan,* 402 U.S. 530, 533, 91 S.Ct. 1580, 1582, 29 L.Ed.2d 85 (1971). Recent precedent of this circuit makes clear, however, that the propriety of an order certifying a juvenile for trial in the Guam superior court is properly considered by this court after conviction and appeal to the Guam district court.

In *Guam v. Lefever*, 454 F.2d 270 (9th Cir. 1972) (per curiam), we held that the refusal of the Guam district court to dismiss an indictment based on the appellant's allegation that he was subject to the exclusive jurisdiction of the Guam juvenile court was not a final appealable order under § 1291 because the order "may be fully reviewed by this court if and when Lefever is convicted and sentenced." *Id.* at 271. *Lefever* cannot be meaningfully distinguished. Jurisdiction over a person under 18 years of age may be transferred from the Guam juvenile court to the superior court only by certification pursuant to Guam Civ.Pro.Code § 255. A challenge to the superior court's jurisdiction, or a claim that the juvenile court is the exclusive forum for trial, is necessarily a challenge to the certification order which causes the transfer.

Because *Lefever* contemplates post-trial review in this court of alleged defects in the jurisdiction of the Guam superior court over minors, denial of interlocutory review of certification orders would not deprive Kingsbury of his right to later consideration by this court of the propriety of the certification on appeal from final judgment. The third requirement of *Cohen* is not satisfied, a Guam juvenile court certification order pursuant to § 255 is not a collateral final order and appellate jurisdiction under § 1291 is not available. The appeal should be dismissed.

D

The majority forsakes the clarity of the principles of § 1291 finality and in so doing both adopts an unduly restrictive view of Guam law and unnecessarily raises

disturbing questions about the determination of our jurisdiction.

1

The majority concludes that under Guam Civ.Proc.Code § 272, an order of certification transferring a minor to the superior court for trial is reviewable in the district court's appellate division only by interlocutory appeal before trial and that failure to raise the claim prevents later consideration of it after final judgment.

Nothing in § 272, its history or any court decision is cited to support this narrow interpretation, and indeed no authority for that bare conclusion exists. By its terms, § 272 provides in part:

> An interested party aggrieved by order or decree of the court may apply to the District Court of Guam for the allowance of an appeal, and the said court may allow such appeal whenever in the opinion of said court the order or decree ought to be reviewed.

There is no timing component to § 272 which suggests it will apply only before trial.

In defense of its interpretation, the majority analogizes § 272 to other state statutes and decisions of some state courts limiting review of certification orders to interlocutory appeals. These cases are so wed to local statutes and procedures, many of which are unlike § 272, that the analogy is but an illusion.

To illustrate, in *People v. Chi Ko Wong,* 18 Cal.3d 698, 557 P.2d 976, 135 Cal.Rptr. 392 (1976), the California Supreme Court held that a certification order may be reviewed only before trial and not after. The ruling was

based, however, on the fact that in California, the right to appeal in a criminal case is a right conferred by the legislature and it had not been conferred to permit review of certifications. *Id.* Therefore, the only means of review available was deemed to be by extraordinary writ before trial. Yet, as the majority holds, the Guam legislature confers a right of appeal in § 272. *Chi Ko Wong* is therefore not only distinguishable but its analysis cannot be used to limit the appeal right in § 272 because the case is peculiarly based on the absence of any right in California.[2]

The analogies drawn by the majority fail to persuade that the right to appeal a certification order exists only before trial under § 272.

2

Having restricted the scope of § 272 by its own definition, the majority concludes that this court must review the certification order before trial, if at all, because Guam law does not permit review by the district court after trial. Maj.Op., slip op. at 3203, at ..... This is a disturbing revelation.

The Guam legislature may determine the jurisdiction of the appellate division of the district court over decisions

---

[2]Similarly, other state cases cited by the majority in its meandering analogy, such as *State v. Stanley*, 60 Haw. 527, 592 P.2d 422, 425-26, *cert. denied*, 444 U.S. 871, 100 S.Ct. 149, 62 L.Ed.2d 97 (1979), and *State v. Briggs*, 245 Or. 503, 420 P.2d 71, 73 (1966), are patently inapposite. Both the statutes which the courts interpreted permitted appellate review of "final orders" of the state trial courts. Unlike § 272, the very terms of the state jurisdictional statutes included an element specifying the time for review—at the point of finality. Section 272 contains no such element.

of the Guam territorial courts. 48 U.S.C. § 1424(a); *Territory of Guam v. Olsen,* 431 U.S. 195, 200, 97 S.Ct. 1774, 1778, 52 L.Ed.2d 250 (1977). The essence of the majority's analysis is that Guam limits appeals under § 272 to before trial, and therefore our review can exist only before trial. Linkage of this court's jurisdiction to that which the Guam legislature may grant to the district court's appellate division would mean that the Guam legislature has the power to control the scope of review by this court of cases coming from a district court of the United States. If this were so, Guam could create categories of interlocutory appeals to the Ninth Circuit by permitting only interlocutory appeals to the Guam district court. I do not think that any legislative body, other than Congress, can control the jurisdiction of Article III courts. Control has never been left to territorial legislatures.

In *People of the Territory of Guam v. Okada,* 642 F.2d 287, 288-89 (9th Cir. 1981), we held that the Guam legislature has no power to determine the jurisdiction of the Ninth Circuit Court of Appeals. The majority's theory is inconsistent with this principle and the analogy the majority draws to § 1257 and *Cox Broadcasting Corp. v. Cohn,* 420 U.S. 469, 95 S.Ct. 1029, 43 L.Ed.2d 328 (1975), reflects an important confusion of our relationship to Guam law and its courts.

The Supreme Court under § 1257 may review "final" decisions of a state's highest court, but only if those decisions present "federal questions." As to matters of state law, the Supreme Court is bound to accept the deci-

sion of the state's highest court. *See Erie Railroad Co. v. Tompkins*, 304 U.S. 64, 58 S.Ct. 817, 82 L.Ed. 1188 (1938).

In *Cox Broadcasting Corp. v. Cohn, supra*, the Court described four exceptions to the finality requirement of § 1257. The majority invokes the third of these, which applies in

> those situations where the federal claim has been finally decided, with further proceedings on the merits in the state courts to come, but in which later review of the federal issue cannot be had whatever the ultimate outcome of the case. Thus, in these cases, if the party seeking interim review ultimately prevails on the merits, the federal issue will be mooted; if he were to lose on the merits, however, the *governing state law* would not permit him again to present his federal claims for review.

Id. at 481, 95 S.Ct. at 1039 (emphasis added).

The reason for the third *Cox Broadcasting* exception must be understood in light of our federal system. The Court has long held that to preserve a federal question for consideration in the Supreme Court after state proceedings, the federal question must be "seasonably raised in accordance with the requirements of state law. Noncompliance with such local law can thus be an adequate state ground for a decision below." *Edelman v. California*, 344 U.S. 357, 358-59, 73 S.Ct. 293, 294-95, 97 L.Ed. 387 (1953) (citations omitted). An adequate state ground for decision, such as a procedural rule requiring a claim be raised at the time specified by the state, may preclude Supreme Court review. *See North Dakota Board of Pharmacy v. Snyder's Drug Stores, Inc.*, 414 U.S. 156, 163-

64, 94 S.Ct. 407, 412-13, 38 L.Ed.2d 379 (1973) (applying the third *Cox Broadcasting* exception). Thus, when state procedural rules permit only interlocutory presentation of federal questions, and prevent their later presentation, the Supreme Court may consider the state's ruling on the only federally reviewable issue—the federal question—final and subject to review under § 1257. *Cox Broadcasting Corp. v. Cohn, supra,* 420 U.S. at 481, 95 S.Ct. at 1039. If the Court does not do so, review may be impossible later because of the state procedural rule.

The majority errs in assuming that determinations of Guam law have a preclusive effect on our jurisdiction, akin to that of state law on the Supreme Court. Unlike Supreme Court review of state decisions, we may review all aspects of a decision of the Guam courts; we are not limited to a consideration of "federal questions." By granting the Ninth Circuit jurisdiction over the Guam district court pursuant to § 1291, Congress provided for review even of "cases raising only issues of local law . . . ." which arose originally in territorial courts. *Territory of Guam v. Olsen, supra,* 431 U.S. at 199 n.6, 97 S.Ct. at 1777. Indeed the majority decides a question of Guam law when it narrowly construes § 272. The underpinnings of the third element of *Cox Broadcasting* therefore does not apply in the case of Guam.[3] We need not address the

---

[3]As to matters of purely local Guam law, we apply a deferential standard of review. *See, e.g., People of the Territory of Guam v. Dela Rosa,* 644 F.2d 1257, 1260 (9th Cir. 1981) (per curiam). But the deferential standard is "founded on sound policy" and is designed to assure the orderly development of territorial government in matters of local policy. *See Bonet v. Texas Co.,* 308 U.S. 463, 470-71, 60 S.Ct. 349, 353-54, 84 L.Ed. 401 (1940); *Diaz v.*

"federal issues" now lest otherwise they become lost in impenetrable determinations of Guam law; we may consider those decisions of Guam law as well when federal rather than Guam legal principles call for such review. This is not a situation, as in *Cox Broadcasting*, where the extent of federal review is limited to "federal questions" and state law determines when those must be presented.

Because *Cox Broadcasting* is based on entirely different principles which do not apply in the case of Guam, I cannot agree that the jurisdiction of this court under § 1291 to review a decision of a district court hinges upon when the Guam legislature elects to permit the district court to address the question. I am particularly unprepared to do so when the principles of appellate finality under § 1291 and *Guam v. Lefever, supra*, readily dispose of the jurisdictional question presented in this case. I would dismiss the appeal for the reasons herein set forth.

Gonzalez, 261 U.S. 102, 105-06, 43 S.Ct. 286, 287-88, 67 L.Ed. 550 (1923). In matters of purely state law, it is the constitution, not principles of policy, which limits the scope of federal review. *See Erie Railroad Co. v. Tompkins, supra*, 304 U.S. at 80, 58 S.Ct. at 823.

In the District Court of Guam
Territory of Guam

Appellate Division

D.C. Criminal Case
Nos. 79-0024A and 79-0028A
(Consolidated)

The People of the Territory of Guam,
Plaintiff-Appellee,

vs.

William E. Kingsbury,
Defendant-Appellant.

[Filed July 13, 1979]

OPINION

Before: Duenas and Laureta, District Judges, and Hefner, Designated Judge.

PER CURIAM:

This is a consolidated interlocutory appeal brought pursuant to Section 65-17 of the Guam Criminal Procedure Code. The Petitioner argues that his certification to stand trial as an adult was invalid because (1) the Guam certification statute does not provide standards to guide the Juvenile Court Judge, (2) there was no full investigation as mandated by statute, (3) the confession received into evidence was inadmissible, and (4) the Juvenile Court's decision ordering Certification did not "set forth the basis thereof with sufficient specificity to permit meaningful review."

First, we hold that the certification statute in question (Guam Code of Civil Procedure, Section 255) is valid, even though it does not spell out specific standards for certification.[1] See *People v. Peters,* 244 N.W.2d 898 (Michigan S.Ct. 1974); *Donald L. v. Superior Court,* 498 P.2d 1098 (Cal.S.Ct. 1972); *People v. Shipp,* 31 Cal.Rptr. 577; 382 P.2d 577 (1963).

The second issue raised on appeal concerns whether or not the certifying judge made an adequate investigation concerning the Petitioner's background: e.g. his school history, his psychological or emotional development, his home situation, etc. Having studied the evidence presented at the certification hearing, we hold that the certifying judge did not abuse his discretion in holding that the Petitioner should be tried as an adult.

Appendixed to the Supreme Court Opinion in *Kent v. U.S.,* 383 U.S. 541 (1966), is a policy memorandum developed by the District of Columbia Court system to guide a juvenile judge as to determinative factors in deciding

---

[1]Section 255, of the Guam Code of Civil Procedure provides as follows:

> "§ 255. *Certification to courts for criminal proceedings.* If a child sixteen (16) years of age or older is charged with a public offense, and if the court after full investigation deems it contrary to the best interest of such child or of the public to retain jurisdiction, the court may in its discretion certify such child for proper criminal proceedings to any court which would have trial jurisdiction of such offense if committed by an adult, but no child under sixteen (16) years of age shall be so certified; provided, that such certifying judge shall not in turn preside over the criminal proceedings against such child."

whether a juvenile should be certified. These factors include the following:

(1) The seriousness of the alleged offense to the community and whether the protection of the community requires certification;

(2) Whether the alleged offense was committed in an aggressive violent, premeditated or willful manner;

(3) Whether the alleged offense was against persons or against property, greater weight to be given to offenses against persons, especially if personal injury resulted;

(4) The prospective merit of the complaint, i.e. whether there is sufficient evidence upon which a grand jury may return an indictment;

(5) The desirability of trial and disposition of the entire offense in one court when the juvenile's associates in the alleged offense are adults who will be charged with a crime in the criminal court;

(6) The sophistication and maturity of the juvenile as determined by consideration of his home, environmental situation, emotional attitude and pattern of living;

(7) The record and previous history of the juvenile, including previous contacts with the Youth Aid Division, other law enforcement agencies, juvenile courts and other jurisdictions;

(8) The prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the juvenile (if he is found to have committed the alleged offense) by the use of procedures, services and facilities currently available to the Juvenile Court.

The transcript and exhibits introduced paint a picture of a juvenile, almost eighteen, who for several weeks methodically planned the murder of his father. Statements given to the police indicate that the Petitioner had dropped out of high school, that he had managed to save $10,000.00, that he spent nights out drinking with friends at night clubs and staying in hotels and that he paid for the gun which killed his father. Petitioner confessed to the crime and had an accomplice. (Plaintiff's Exhibits 10 and 11).

While it would have been better practice had the court below conducted a more extensive investigation into the Petitioner's background, it seems clear that there was sufficient evidence for the judge below to have determined that it would be in the best interest of the public to try the Petitioner as an adult, especially in view of the gravity of his alleged crime and the fact that less than two months of juvenile rehabilitation could have been provided under the present statute. Clearly, the purpose of retaining juvenile jurisdiction over a minor is for rehabilitation purposes and the court below was within its discretion in certifying Petitioner as an adult.[2]

Likewise, we are unpersuaded by Petitioner's arguments that his confession should have been suppressed. Any deviation from the requirements of the Juvenile Code were slight and no cases have been presented to show that a

---

[2]The Petitioner does not suggest what additional evidence might have been presented to suggest that the Juvenile Court should have retained jurisdiction over him when such jurisdiction could only have lasted several weeks at the most. While the government has the burden in a certification hearing, it is also up to a minor's counsel to present any mitigating facts to the court.

confession should be suppressed on such grounds. Except for due process argument based on juvenile statutory requirements, Petitioner does not contend that his *Miranda* rights were violated.[3]

Finally, as the above analysis suggests, we are satisfied that the Juvenile Court's decision was adequate for purposes of appellate review.[4]

AFFIRMED.

/s/ CRISTOBAL C. DUENAS

/s/ ALFRED LAURETA

/s/ ROBERT A. HEFNER

---

[3]It should also be pointed out that the Petitioner had no standing to object to the statement given by Michael A. Geisinger. Also, no hearsay objection was raised below.

[4]However, while we have affirmed the Juvenile Court's Certification, it is strongly suggested that the method used could be vastly improved. Certainly, the minor's background is an important consideration and it is only the grievousness of the crime charged, the small amount of time to be afforded for rehabilitation, and certain facts in signed statements tending to prove that the Petitioner should be tried as an adult which keep us from reversing the Juvenile Court's determination. The government must be placed on notice that the Guam Juvenile Court should adhere to the due process requirements outlined in *Kent v. U.S., supra,* and that while certification is discretionary, such proceedings are not to be conducted arbitrarily in a rubber stamp fashion.

In the Superior Court of Guam
Territory of Guam

Juvenile Delinquent
Case No. 30-79

People of the Territory of Guam
In the Interest of
William E. Kingsbury,
Minor.

[Filed March 6, 1979]

DECISION

This matter came before the Court on the Territory of Guam's Petition for Certification pursuant to Section 255 of the Code of Civil Procedure. Gary Hull represented the Territory of Guam and the minor, William E. Kingsbury, was represented by his attorney, Howard Trapp. The matter was heard before the Honorable Paul J. Abbate on March 2, 1979.

After a full hearing on the matter, this Court finds:

That the minor is presently charged with the Murder and Conspiracy to Commit the Murder of his father, Milton Kingsbury.

That there is sufficient evidence upon which a Grand Jury could return an indictment.

That the commission of the alleged crimes exhibit a substantial degree of criminal sophistication. Evidence was introduced that the minor attempted to procure the services of another individual to kill his father for the sum of $10,000.00. There was also evidence that the minor arranged for the purchase of the alleged murder weapon shortly before the homicide.

That the alleged offense was committed in a premeditated and wilful manner. Evidence was introduced that the minor had been planning the crime for a number of weeks. On the day of the crime, the minor allegedly went to the scene at 1:30 A. M. to gain entry and returned several hours later to await his father's arrival.

That the minor is not amenable to treatment under the Juvenile Code. The minor was born on May 6, 1961 and will reach the age of majority approximately two months from the date of the hearing. Testimony was received from John Balajadia, supervisor of Juvenile Hall and a juvenile probation officer. The testimony leads the Court to the determination that the minor's proximity to the age of majority and the gravity of the crimes render doubtful the minor's prospects for rehabilitation by use of facilities and programs available to the Juvenile Court.

In view of the foregoing, the Court hereby ORDERS transfer of jurisdiction to the Superior Court of Guam and further ORDERS the Attorney General's Office to file a complaint or refer to the Grand Jury for possible indictment within ten (10) days of the date hereof. The minor is

hereby ORDERED to be placed in the custody of the Department of Public Safety and bail is set at $125,000.00.

SO ORDERED.

Dated this 6th day of March, 1979.

/s/ PAUL J. ABBATE

Presiding Judge
Superior Court of Guam